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July 31, 2019

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation
by AmeriFactors Financial Group, LLC
CG Docket Nos. 02-278 and 05-338

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Federal Communications Commission's ("FCC's") rules, the undersigned counsel hereby provides notice that on July 25, 2019, AmeriFactors Financial Group, LLC ("AmeriFactors") met with members of the Consumer & Governmental Affairs Bureau, and, in a separate meeting, with Zenji Nakazawa, Public Safety and Consumer Protection Advisor, Office of Chairman Ajit Pai, concerning its Petition of Expedited Declaratory Ruling filed July 13, 2017 in the above-captioned proceedings ("Petition"). In attendance at the meeting with the Bureau were Patrick Webre, Bureau Chief, Mark Stone, Deputy Bureau Chief, Kurt Schroeder, Division Chief, Nancy Stevenson, Deputy Division Chief, Erica McMahon and Richard Smith. In attendance at both meetings on behalf of AmeriFactors was Angela Fiorentino, General Counsel and Steven Augustino of Kelley Drye & Warren LLP.

In the meetings, AmeriFactors urged the Commission to grant its Petition promptly.¹ AmeriFactors explained that technological advances have greatly displaced

¹ The district court hearing the complaint against AmeriFactors has granted a stay through September 27, 2019 to allow for FCC input on this important question. AmeriFactors therefore urged the Commission to provide guidance before that date.

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traditional facsimile machines of the past. With this technological displacement has come the disappearance of the harms that underlie the fax advertising restrictions of the Telephone Consumer Protection Act of 1991 (“TCPA”).

The petition presents a straight-forward question of statutory interpretation regarding section 227(b)(1)(C) and the related definition of “telephone facsimile machine” in 227(a)(3). AmeriFactors urged the Commission to conclude that “faxes” received via online fax services are not received on a “telephone facsimile machine” as defined in the TCPA.²

To the extent that the *Westfax Order* suggests that online fax services are within the TCPA, AmeriFactors stated that the order should explicitly reject the *Westfax* reasoning with respect to the services presented by AmeriFactors in its petition.

Finally, AmeriFactors also noted that, while robocalling is a top consumer complaint to the FCC, junk faxing decidedly is not. In May 2018, the FCC noted in its Report on Unsolicited Advertisements, sent to Congress pursuant to the Junk Fax Prevention Act of 2005, that junk fax complaints had declined nearly 95% from their 2007 peak.³ Indeed, faxing complaints between May 2017 and April 2018 averaged only 260 complaints per month.⁴ Granting of the AmeriFactors petition will not increase the incidence of unwanted facsimile

² 47 U.S.C. § 227(a)(3) (definition of “telephone facsimile machine”); *See* Petition at 12-16.

³ Federal Communications Commission, Enforcement Bureau, Report on Unsolicited Facsimile Advertisements, at Appendix (unnumbered page) (May 2, 2018) (“2018 Report on Unsolicited Facsimile Advertisements”).

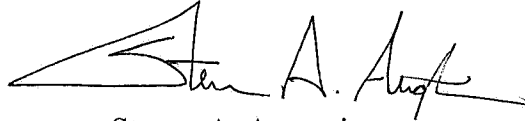
⁴ *Id.*

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advertisements, nor would it leave consumers of online fax services without remedies to police unwanted communications. Users of the service often have the ability to engage in self-help through blocking of unwanted numbers, while abusive practices could be handled through the CAN-SPAM Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steven A. Augustino

*Counsel for AmeriFactors Financial Group,
LLC*

SAA:pab

cc: Patrick Webre
Mark Stone
Kurt Schroeder
Nancy Stevenson
Erica McMahon
Richard Smith